HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.32 of 2007

Between:

South Central Railway,
represented by its General
Manager, Secunderabad and others. …Appellants

And

Mutha Navin Krishna and others. …Respondents.

:: J U D G M E N T ::

Counsel for the appellants : Sri S.R.Ashok, Senior Advocate, assisted by Sri C.V.Rajeeva Reddy

Counsel for the respondents : Sri N.V.Anantha Krishna

19th January, 2007

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 9-11-2006 passed by the learned Single Judge, whereby she allowed the writ petition filed by the respondents and quashed order dated 31-3-2006 passed by Estate Officer and Additional Divisional Railway Manager, South Central Railway, Vijayawada (hereinafter referred to as 'the Estate Officer') under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the 1971 Act').

A perusal of the record shows that by claiming themselves to be the owners of land comprised in Town Survey No.1961/1, Ward No.2, Block No.42 of Kakinada Town, the respondents filed Writ Petition No.1309 of 2006 against their threatened dispossession. The same was disposed of by this Court on 27-1-2006 with the direction that the non-petitioners (the appellants herein) shall not interfere or dispossess the petitioners (the respondents herein) from the land comprised in Town Survey No.1961/1 of Kakinada Town and Municipal Corporation without following the due process of law. Thereafter, the Estate Officer issued notices dated 16-2-2006 to the respondents under Section 4(1) of the 1971 Act requiring them to vacate the land comprised in Town Survey/R.S. No.1961/2 from 14/2 to 14/11-12 between Kakinada Town and Kakinada Port Railway Station. Some of the respondents filed joint reply dated 20-2-2006 and claimed that in view of the joint survey report dated 31-12-2005, the Railways do not have any right over the land comprised in Town Survey No.1961/1 measuring Ac.22.00, which was owned by Sri Mandal Suryanarayana and others and, therefore, they cannot be treated as unauthorised occupants of public premises. Thereafter, the Estate Officer passed order dated 31-3-2006 and called upon them to vacate the premises within 15 days with the stipulation that if they fail to do so, then they will be evicted by use of such force, as may be necessary.

The respondents could have challenged the eviction order by filing an appeal under Section 9 of the 1971 Act, but instead of availing the statutory remedy of appeal, they directly filed writ petition under Article 226 of the Constitution of India by contending that the order passed by the Estate Officer is without jurisdiction and that the provisions of the 1971 Act could not have been invoked qua the land comprised in Town Survey No.1961/1. They claimed that the Railway property falls within Town Survey No.1961/2 and not in Town Survey No.1961/1 and, therefore, they cannot be treated as unauthorised occupants of the public premises.

In the counter filed by the non-petitioners (the appellants herein), an objection was taken to the maintainability of the writ petition on the ground that the writ petitioners have got an effective alternative remedy of appeal.

The learned Single Judge brushed aside the objection raised on behalf of the appellants to the maintainability of the writ petition on the ground of availability of alternative remedy to the petitioners by observing that the order of eviction suffers from the vice of lack of jurisdiction. The learned Single Judge then examined the factual matrix of the case and concluded that the Estate Officer was not entitled to issue notice to the petitioners under Section 4(1) of the 1971 Act or pass the order of eviction. For the sake of convenient reference, the relevant portion of the impugned order is reproduced below:

> "In the instant case, even according to the respondents, they are claiming title only in respect of T.S.No.1961/2. The writ petitioners never made any claim in respect of T.S.No.1961/2, but their specific case is that they are in possession of different extents of land situated in T.S.No.1961/1 having purchased the same for valid consideration. They relied upon the Joint Survey Report dated 31-12-2005 which was signed by the Town Surveyor,

Municipal Corporation, Kakinada; Town Planning Officer, Municipal Corporation, Kakinada Urban; Mandal Revenue Officer, Kakinada Urban; Mandal Surveyor, Kakinada Urban apart from the Senior Section Engineer of South Central Railway. On the basis of the endorsement dated 7-7-1941 made in TSFR by Taluk Register, it was recorded in the said report dated 31-12-2005 that T.S.No.1961/1 admeasuring 22 acres + 6907 sq.ft is owned by one Mandala Suryanarayana, whereas T.S.No.1961/2 admeasuring 13 acres + 23522 sq.ft owned by MSM Railway Company. May be that, the respondents subsequently contended that the said report was not based on the original records and even the officer who was a signatory to that report was not competent to represent the Railways. However, the said dispute has not yet been resolved and the fact remains that as on today the Joint Survey Report dated 31-12-2005 stands good and binding between the parties. Though the 2nd respondent addressed a letter to the Town Planning Officer, Municipal Corporation raising certain objections, no further steps have been taken thereafter by the respondents by producing the records, as called upon by the Town Planning Officer, Kakinada Municipal Corporation. As a matter of fact, the entire controversy appears to be with regard to the demarcation of T.S.No.1961/2. Admittedly, the respondents are not making any claim in respect of T.S.No.1961/1. Though in this writ petition, the respondents claimed that T.S.No.1961/2 comprises of 33 acres + 23552 sq. ft., no material has been placed before this Court to substantiate the said plea. In case the respondents raise any dispute as to the demarcation/identity of T.S.No.1961/2, it is for them to establish their case by working out the appropriate remedy available under law. In the absence of such determination with regard to the extent as well as the demarcation of T.S.No.1961/2, the respondents cannot claim any title in respect of T.S.No.1961/1 which is in possession of the petitioners. As a matter of fact, in Form-A notice issued under Section 4 (1) of the Act, the land in occupation of the petitioners was described as the land at KM 14/0 to 14/11-12

between Kakinada Town and Kakinada Port Railway Stations without reference to T.S.No.1961/2. Even in the impugned eviction notice dated 31-3-2006 issued in Form-B the land was described as T.S.No.1961/2 alleging that the same has been in occupation of the petitioners. Since the demarcation/identity of the said land is seriously in dispute, unless the dispute is resolved by the competent authority and the claim of the respondents that the land in occupation of the petitioners forms part of T.S.No.1961/2 is established, I am of the opinion that the definition of *public premises* under Section 2 (e) of the Act is not attracted. As rightly contended by the learned Counsel for the petitioner, in the facts and circumstances of the case, the respondents are not entitled to invoke the provisions of the Act.

In the light of the above finding that the impugned proceedings are without jurisdiction, the existence of alternative remedy of appeal under Section 9 of the Act is not a bar to grant the relief under Article 226 of the Constitution of India."

We have heard Sri S.R.Ashok, learned Senior Counsel appearing for the appellants and Sri N.V.Anantha Krishna, learned counsel for the respondents and perused the record. In our opinion, the reasons assigned by the learned Single Judge for allowing the respondents to bypass the statutory remedy of appeal are legally unsustainable and the order impugned in this appeal is liable to be set aside.

It is settled law that in exercise of power under Article 226 of the Constitution, the High Court will not entertain writ petition if an effective alternative remedy is available to the petitioner. In **A.V. Venkateshwaran v. R.S. Wadhwani**[1], the Constitution Bench of the Supreme Court, while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one

which bars the jurisdiction of the High Court to entertain the petition, but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[2], another Constitution Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely

because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[3]**,** the Supreme Court reiterated the rule of alternative remedy in the following words:

"When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court

may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], the Supreme Court stated the rule of alternative remedy in the following words:

" Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226."

In **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath**

Ghosh[7], **Swadeshi Cotton Mills Co. Ltd., v. Union of India**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14] the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: *i*) where the writ petition seeks enforcement of any of the fundamental rights; (*ii*) where there is failure of principles of natural justice; or (*iii*) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In **Central Coalfields Ltd. v. State of Jharkhand**[15], the Supreme Court approved the judgment of the High Court of Jharkhand,

which refused to interfere with the order passed by the competent authority under the Bihar and Orissa Public Demands Recovery Act, 1914 on the ground of availability of alternative remedy and observed:

> "……It is no doubt true that according to the appellant Company the certificate proceedings could not have been initiated under the Bihar and Orissa Public Demands Recovery Act, 1914, in view of the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalisation) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar and Orissa Public Demands Recovery Act, 1914 and the appellant Company was directed to make payment. The said order is subject to appeal under Section 60 of the said Act. A reading of the order dated 17-11-1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of the Coking Coal Mines (Nationalisation) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from the appellant Company. Reference was made to Sections 6 and 7 of the said Act and it was observed that the State Government had power to make demand of rent from the appellant Company. In view of the above position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals……"

In our opinion, the case of the respondents does not fall within the ambit of either of the exceptions carved out by the Supreme Court in **Harbanslal Sahnia's** case (supra) to the rule of alternative remedy. Therefore, it was legally impressible for the learned Single Judge to have entertained the writ petition and quash the order of eviction.

On the issue of efficacy of the alternative remedy of appeal, it is

apposite to observe that the appellate authority i.e., the District Judge is entitled to examine all the issues and questions of fact and law including the one whether the Estate Officer had the jurisdiction to initiate proceedings against the respondents under Section 4(1) of the 1971 Act.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the writ petition filed by the respondents is dismissed. However, liberty is given to the respondents to avail the remedy of appeal under Section 9 of the 1971 Act.

At this stage, learned counsel for the respondents made a request that the Court may protect the possession of his clients till filing of the appeal. Sri S.R.Ashok, learned Senior Counsel appearing for the appellants agreed that if appeal is preferred within a reasonable time, the respondents, who are presently occupying the land, shall not be forcibly evicted in furtherance of order dated 31-3-2006.

In view of the statement made by the learned counsel, we direct that for a period of four weeks from today, the respondents, who are in possession of the land in dispute, shall not be evicted in furtherance of or in execution of order dated 31-3-2006. Within this time, the respondents shall be free to file appeal under Section 9 of the 1971 Act along with applications for condonation of delay and suspension of the order of eviction. The appellate authority is expected to pass appropriate order within a period of seven days of the institution of the appeal.

If the respondents do not file appeal within four weeks, then the appellants shall be free to execute the order of eviction.

As a sequel to disposal of the appeal in the manner indicated above, WAMP.No.51 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

19th January, 2007

C.V.NAGARJUNA REDDY, J.

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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] (1983) 2 SCC 433
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] AIR 1981 SC 818
[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216
[13] (2003) 2 SCC 107
[14] (2004) 3 SCC 553
[15] (2005) 7 SCC 492